

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE**

UNITED STATES OF AMERICA,

Plaintiff,

v.

MOISES HERNANDEZ,

Defendant.

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Crim. No. 06-736-5 (RBK)

ORDER

KUGLER, United States District Judge:

THIS MATTER comes before the Court upon Defendant Moises Hernandez’s Motion for a Reduction of Sentence under the First Step Act § 404 (“§ 404 Motion”) (ECF No. 175) and Motion to Stay (ECF No. 177); and

THE COURT NOTING that on May 7, 2008, Hernandez pleaded guilty to a superseding information charging him, in part, with conspiracy to distribute crack cocaine, contrary to 21 U.S.C. §§ 841(a)(1) and (b)(1)(C), in violation of 21 U.S.C. § 846. (ECF No. 176, “Gov’t Opp’n” at 3); and

THE COURT FURTHER NOTING that the Third Circuit held that convictions under § 841(b)(1)(C) are not “covered offenses” under the First Step Act because §§ 2 and 3 of the Fair Sentencing Act of 2010 did not modify the statutory sentencing range for § 841(b)(1)(C). *United States v. Birt*, 966 F.3d 257, 265 (3d Cir. 2020). Therefore, the Third Circuit held, those with convictions under § 841(b)(1)(C) could not pursue relief under § 404. *Id.*; and

THE COURT FURTHER NOTING that the United States Supreme Court held the same in *Terry v. United States*, 141 S. Ct. 1858, 1864 (2021); and

THE COURT FINDING that *Terry* and *Birt* foreclose relief to Hernandez under § 404;
and

IT IS HEREBY ORDERED that the Court **DENIES** Hernandez's § 404 Motion (ECF No. 175); and

IT IS HEREBY FURTHER ORDERED that the Clerk of Court **administratively terminate** Hernandez's Motion to Stay (ECF No. 177) **as moot**.

Dated: December 19, 2022

/s/ Robert B. Kugler
ROBERT B. KUGLER
United States District Judge